

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

NO. 20-cr-01867-MV

JOSHUA GUTIERREZ,

Defendant.

**UNITED STATES' UNOPPOSED MOTION FOR
PRELIMINARY ORDER OF FORFEITURE**

The United States, pursuant to Fed. R. Crim. P. 32.2(b), respectfully submits its Motion for a Preliminary Order of Forfeiture regarding the following property:

A. .380 Ruger LCP, SN:371771904;

(hereafter collectively referred to as "Certain Subject Property").

The grounds for this motion are as follows:

1. The United States and Defendant Joshua Gutierrez entered into a Plea Agreement (Doc. 25), in which Defendant Gutierrez pleaded guilty to Counts 1 and 2 of an Information. Count 1 charged Voluntary Manslaughter in Indian Country in violation of 18 U.S.C. § § 1153 and 1112. Count 2 charged Discharging a Firearm During and in Relation to a Crime of Violence in violation of 18 U.S.C. § 924(c)(1)(A)(iii). In paragraphs 17-21 of the Plea Agreement, Defendant Gutierrez agreed to forfeit all right, title, and interest in the Certain Subject Property.

2. Based upon the plea agreement, the United States has established the requisite nexus between the Certain Subject Property and the offenses to which the Defendant has pleaded guilty. Accordingly, the Certain Subject Property is subject to forfeiture to the United States pursuant to 18 U.S.C. § 924(d)(1) and Fed. R. Crim. P. 32.2(b)(1).

3. Upon the issuance of a Preliminary Order of Forfeiture and pursuant to 21 U.S.C. § 853(n), the United States will publish notice of the Preliminary Order on the government's official internet website, www.forfeiture.gov, for at least 30 consecutive days. The United States may also, to the extent practicable, provide direct written notice to any person, other than the Defendant, known to have alleged an interest in the Certain Subject Property, as a substitute for published notice as to those persons so notified. The publication and any written notice will advise that any person, other than the Defendant, having or claiming a legal interest in the Certain Subject Property must file a petition with the Court contesting the forfeiture in accordance with 21 U.S.C. § 853(n) and Rule 32.2(c) within thirty (30) days of the final publication of notice or of receipt of actual notice, whichever is earlier. 21 U.S.C. § 853(n)(2). The notice will also state that the petition shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's right, title or interest in the Certain Subject Property and any additional facts supporting the petitioner's claim and the relief sought. 21 U.S.C. § 853(n)(3).

4. In accordance with the provisions of 21 U.S.C. § 853 and Fed. R. Crim. P. 32.2(b)(3), the United States requests that it be permitted to seize the Certain Subject Property whether held by the Defendant or a third party, and to undertake whatever discovery is necessary to identify, locate, or dispose of property subject to forfeiture, or substitute assets for such property.

5. Defense counsel was contacted and does not oppose this motion.

WHEREFORE, the United States respectfully requests this Court to enter a Preliminary Order of Forfeiture pursuant to 18 U.S.C. § 924(d)(1) and Fed. R. Crim. P. 32.2(b)(1), which forfeits all right, title, and interest of Defendant Joshua Gutierrez in the Certain Subject Property.

The United States further requests that the order authorize the United States (or a designee) to seize and maintain custody of the Certain Subject Property, authorize the United States to begin proceedings consistent with any statutory requirements pertaining to ancillary hearings and the rights of third parties, and to dispose of it in accordance with law.

Respectfully submitted,

JOHN C. ANDERSON
UNITED STATES ATTORNEY

Electronically filed December 3, 2020

ALLISON C. JAROS
Assistant United States Attorney
PO Box 607
Albuquerque, NM 87103
(505) 346-7274

I hereby certify that a copy of this motion was delivered via CM/ECF to counsel for the defendant.

Electronically filed
ALLISON C. JAROS